

**Minutes
COMMISSION FOR MH/DD/SAS
Rules Committee**

**Holiday Inn-North
2805 Highwoods Blvd., Raleigh, NC 27604**

Wednesday, July 13, 2005

Attending:

Rules Committee Members: Floyd McCullouch, Anna Scheyett, Pender McElroy, Connie Mele, Martha Martinat, Ellen Russell, Mary Kelly, Mazie Fleetwood, Emily Moore, Frederica Stelle, Dorothy Crawford, Buren Harrelson, Clayton Cone, Tom Ryba, Ann Forbes, Ellen Russell, Laura Coker

Ex-Officios: Joe Donovan, Deby Dihoff, Sally Cameron

Excused: William Sims, MD, Lois Batton and Martha Macon

Division Staff: Mike Moseley, Steven Hairston, Mike Lancaster, MD, Mike Hennike, Chris Phillips, Doug Baker, Lisa Haire, Darlene Creech, Cindy Kornegay, Denise Baker, Vanessa Holman, Stacy Silvia, Tracy Ginn, Starleen Scott-Robbins, Gerald Peacock

Others: Stephanie Alexander, Donald Grantham, Larry Barther, Delwin Clark, Mike Vicario, Kelly Schofield, MD, Jason Jones, Reggie Barnes, Tyrone McRae, Austin Connors, Diane Pomper, Richard Slipsky, Janet Schanzenbach, Cynthia Ward, Tyran Lennor, Nadine Smith, John Crawford

Handouts:

Mailed: April 13, 2005 Rules Committee Draft Minutes; Proposed Rule Changes: Panel Appeals Procedures 10A NCAC 27G .0810, Resolution of Difference of Opinion 10A NCAC .28F .0212, New Licensure Categories for Substance Abuse Intensive Outpatient Program (SAIOP) 10A NCAC 27G .4400 and Substance Abuse Comprehensive Outpatient Treatment (SACOT) 10A NCAC 27G .4500; Regions for Division Institutional Admissions 10A NCAC 28F .0101; Controlled Substance Schedules 10A NCAC 26F .0100 and Rule Reference Material

Welcome, Introductions, and Approval of Minutes:

- Chairman Floyd McCulloch called the meeting to order at 10:19 a.m.
- A moment of silence was requested to honor the soldiers in Iraq.
- He announced an agenda change by moving the discussion of the Resolution of Differences of Opinion/Panel Appeal Procedures and the Regions for Division Institutional Admissions as the first two topics of discussion.

- The minutes of the April 13, 2005 Rules Committee meeting were unanimously approved.

❖ **Resolution of Differences of Opinion and Panel Appeals Procedures**

Michael Hennike, Interim Chief of the DMH's State Operated Services presented the amendments for Resolution of Differences of Opinion and Panel Appeal Procedures rules to include procedures regarding unresolved issues concerning admissions, treatment or discharge between the directors of area authorities/county programs and state operated hospitals.

❖ **Public Comments/ Questions:**

Mike Vacario of the North Carolina Hospital Association submitted comments and concerns to the Commission requesting that the dispute resolution process include the community hospitals in the instances where a patient is in a community hospital. Mike Hennike expressed that the Division doesn't believe there is statutory rulemaking authority to extend the dispute resolution process beyond the State Institutions.

Mr. Vicario stated the North Carolina Hospital Association (NCHA) is willing to continue to work with the LMEs and the Division on finding ways to resolve disputes concerning admissions, treatment and discharge issues via other processes if rulemaking is not appropriate.

Joe Donovan raised questions concerning the amendment of these rules in relationship to advance care directives. It was explained that these rules do not cover the advance care directives. There is a separate section of rules that covers the subject. Additionally, there are general statutes that cover health care power of attorney and advance directives

The Rules Committee unanimously approved the proposed Rule Changes: the Resolution of Difference of Opinion 10A NCAC .28F .0212 and 10A NCAC 27G .0810 with no additional changes to be presented to the Commission on August 18, 2005.

❖ **Regions for Division Institutional Admissions**

Mike Hennike presented the proposed changes to the Regions for Division Institutional Admissions rules. The regions have been realigned into a comprehensive three region model. The intent is to have a region/catchment area for each state facility that does not split LMEs across facility regions. The three region model also distributes the population demographics in an equitable way for each facility and minimizes geographical/logistical issues for individuals who need to access the services of state operated facilities.

A question was raised concerning whether a waiver similar to the waiver obtained by David Swann (Crossroads) to admit clients into facilities closer to their families will be used and will the Division use a waiver for clients that fall in the catchment area of the new mental health facility until it is opened. Mr. Hennike stated that he was not familiar with the wavier Crossroads received, however it is possible a waiver will be used for AP/LMEs to admit their clients into other facilities until the new hospital is opened. April 1, 2006 is the projected effective date of the regions realignment rule. Members wanted to know what issues, if any, David Swann encountered and revisit the possible need for the use of waivers when the rule is presented at the Commission meeting in August.

The Rules Committee unanimously approved forwarding the Regions for Division Institutional Admissions 10A NCAC 28F .0101 with no additional changes to the Commission on August 18, 2005.

❖ **Residential Treatment/PRTF Rules Update**

Dr. Mike Lancaster reported on the status of the Residential Treatment/PRTF rules. Following the Commission for MH/DD/SAS's adoption of the rules at the May 18, 2005 meeting, rules were submitted to the Rules Review Commission (RRC) for review at their June 16, 2005 meeting. The RRC did not take action on the rules due to receiving two letters requesting that the rules be sent to the Office of State Budget and Management to determine whether the rules have a substantial economic impact. OSBM has up to 90 days to make their determination. In addition, the RRC received more than 10 letters objecting to the rules, which could further delay the process. If the fiscal impact is determined to have an aggregate financial impact on all persons affected of \$3 million or greater the rules must be republished in the NC Register. The Commission for MH/DD/SAS must accept comments for an additional 60 day comment period before adopting the rules and sending them back to the RRC. If the fiscal impact is \$3 million or less, the proposed rules are resubmitted to the Rules Review Commission for approval.

❖ **Public Comments/ Questions:**

The chairman opened the floor for public comment.

Dr. Kelly Schofield of the NC Association of Residential Treatment Providers (NCARTP)-addressed the Committee and stated the organization was formed approximately 3 weeks ago and represents roughly 80-90 residential providers in the state. Dr. Schofield stated that members of the organization requested the analysis by OSBM to determine whether the rules have a substantial economic impact. He said the association wants to partner with the Commission and does not wish to delay the implementation of the rules any longer than necessary. He further stated there needs to be an increase in the reimbursement rate paid to Level III providers in order for agencies to be able to afford to hire the staff needed to be in compliance with the new rules. The NCARTP also disagrees with certain clinical components in the rules.

Mr. McElroy informed Dr. Schofield that Bill L'Heureux of the NC Association of Residential Treatment Providers had contacted him on two occasions and that Mr. L'Heureux had stated that NCARTP would like to "partner" with Commission with regard to the Level III group home rules. Mr. McElroy informed Dr. Schofield that a partnership implies that two parties will convene, debate the issues and come to an agreement that both parties can live with, with regard to the final form of the rules. The suggestion by NCARTP that it "partner" with the Commission in revising the rules would be ill-advised if the NCARTP is then going to engage in further delay tactics for rules with which it did not agree. Mr. McElroy stated that "the jury is still out" with regard to whether NCARTP would have any positive input or impact with regard to the Level III group home rules. Mr. McElroy expressed his opinion that the tactics used so far by NCARTP in delaying implementation of the Level III group home rules would make it very difficult for him to engage in a partnership with NCARTP. Nonetheless, Mr. McElroy assured Dr. Schofield that the proceedings of the Rules Committee and the Commission were open and that input was accepted from all sources.

Ann Forbes inquired, how many of the providers within the NCARTP attended the previous meetings of the Commission? Dr. Schofield said that he did not know that any of the association's providers have participated in the Commission meetings. He stated he only learned a few weeks ago that the Commission offered a public forum for providers to discuss their concerns. Dr. Schofield said out of ignorance of the process he thought that he could only provide written comments to voice his opinions. Ms. Forbes asked Dr. Schofield if it was out of ignorance that he did not attempt to contact a Commission member to seek other options to provide feedback. If not, how did he know that he could submit letters to the Rules Review Commission and delay the implementation of the rules? Dr. Schofield assured the Commission that if he knew of another way to go about coming to an agreement on the rules he would have done so, however there are a number of other concerns and clinical issues that neither he nor his colleagues believe is in the best interest of the clients.

Tom Ryba said that he was flabbergasted by NCARTP's claims that the clinical portions of the rules were inappropriate when clinical oversight was headed by, Dr. Michael Lancaster, who is the Chief of Clinical Policy with the Division. Mr. Ryba said that he is one member of the Commission but he disapproves of the allegation that the rules are not clinically appropriate and the methodology used by NCARTP to construct a "partnership" with the Commission. Mr. Ryba said that he will review future submissions made by Dr. Schofield with a "cynical eye."

Anna Scheyett asked Dr. Schofield if there had been a guarantee that there would be a rate increase when the rules were implemented would they have taken steps to delay the implementation of the rules. Mr. Schofield said that they would not have taken those steps if there was a guarantee of a rate increase on the implementation date. He also stated there were other clinical issues they would like to see addressed.

Austin Connors of Children and Family Services Association of NC addressed the Committee regarding the placement process to emphasize that there is a serious and important accountability piece in this process. Every child that ends up in a group home is placed by a legitimate placement authority within the system. Those authorities have access to information from Division of Facility Services (DFS); they have access to the history of agencies and various ways to conduct an investigation and this process should be looked at.

Jason Jones of NCARTP said he operates a Level III group home and when the new rules were released he believed there were clinical issues that should be communicated. NCARTP's goal is to strengthen communication between the providers, LMEs and the state. Providers have to deal with communication issues every day with clients, guardians and LMEs. The NCARTP would like to work with the Commission and other state agencies to close the communication gap that presently exists between these entities.

At 12:30 the Chairman adjourned for lunch.

The Committee reconvened at 1:50 p.m.

Martha Martinat proposed a motion asking Chairman McCullough if the MH Commission could write a letter collectively to the Governor stating that the MH Commission would like to override the decision of the Rules Review Commission (RRC) giving the MH

Commission's position and urging the rules go forward as quickly as possible. Mr. McCullough requested that Mr. McElroy write the letter to the Governor.

Mr. McElroy asked if the Governor has the authority to override the decision of the RRC. Cindy Kornegay informed the Committee that there is a section in G.S. 150B that states the Governor can issue an Executive Order to make effective a permanent rule that is subject to legislative review. Mr. McElroy asked Ms. Kornegay if the Executive Order is exercised before or after the RRC acts. Ms. Kornegay informed him it would be after. Mr. McElroy asked if the Executive Order eliminates the legislative review of the rules. Ms. Kornegay said that it does.

Mr. McElroy asked if RRC's receipt of the 10 letters of objection slows down their review process. Ms. Kornegay said that when the RRC received the request for analysis by OSBM for determination of possible substantial economic impact it stopped the approval process and OSBM has up to 90 days to complete their review.

The Rules Committee unanimously approved the Commission submitting a letter to the Governor updating him on the status of the Residential Treatment/PRTF Rules and MH Commission's position on expediting these rule by Executive Order Exception.

Mr. McElroy also asked that Ms. Kornegay send a brief summary of the RRC process when it receives 10 letters of objection and the request for determination of substantial economic impact to all Commission members.

❖ **Substance Abuse Intensive Outpatient Program (SAIOP) and Substance Abuse Comprehensive Outpatient Treatment Program (SACOT)**

Starleen Scott-Robbins of DMH Best Practices Team presented the proposed adoptions of SAIOP and SACOT licensure rules. The SAIOP and SACOT services are included in the service definition packet that has been submitted for approval to the Centers for Medicare and Medicaid (CMS).

SAIOP is an outpatient service that will serve adults or adolescents with a principal substance related diagnosis (also includes homogeneous groups such as individuals with co-occurring disorders or pregnant women) and uses structured individual and group addiction treatment activities.

SACOT is an outpatient service that will serve adults with a principal substance related diagnosis (also includes homogeneous groups such as individuals with co-occurring disorders or pregnant women). This service will provide individuals with structure and support to achieve and sustain recovery.

The Rules Committee unanimously approved forwarding the new licensure rules for Substance Abuse Intensive Outpatient Program (SAIOP) 10A NCAC 27G .4400 and Substance Abuse Comprehensive Outpatient Treatment (SACOT) 10A NCAC 27G .4500 without additional changes to the Commission on August 18, 2005.

❖ **Controlled Substance Schedules**

Gerald Peacock presented the amendments to the controlled substance schedules I, IV and V.

The Federal Drug Enforcement Administration (DEA) has placed additional substances to the federal controlled substances schedules. It is necessary to add these substances to the NC controlled substance schedules in order for NC law enforcement agencies to take action with regard to these specific substances. The additions are as follows:

Schedule I for Stimulants:

N-Benzylpiperzine

Schedule I for Hallucinogens:

-Alpha-Methyltryptamine

-5-Methoxy-diisopropyltryptamine (5-MeO-DIPT) and -2, 5 Dimethoxy-4-(n) propylthiophenethylamine

Schedule IV for Depressants:

-Zipoclon

Mr. Peacock told the Committee members that The DEA has not made final rule on the Depressant Pregablin that was included in the handouts. He asked that the Committee not consider adding it to Schedule V until a decision has been at the federal level.

The Rules Committee unanimously approved forwarding the amendments of the Controlled Substance Schedules with no additional changes to the Commission on August 18, 2005.

OTHER BUSINESS

Ellen Russell asked what the status is the timeline with the core rules? Ms. Kornegay said that the Division will have to revisit the timeline in light of the delay with Residential Treatment rules.

Anna Schyette raised a concern about why specific training requirements were included for the proposed SAIOP and SACOT rules but were not included when the residential treatment rules were being discussed.

Mr. McElroy asked that Dr. Lancaster provide a status report at the August Commission meeting concerning the plan for rulemaking on staff qualifications and training requirements

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